

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445. (This is a GIL).

September 5, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 17, 2002 which was received in this office on May 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are an out of state seller of aviation fuel (avgas and jet fuel) in your state, we don't retail any product only wholesale it to retailers and end users. My question pertains to the Retailers Occupation Tax when it comes to what is included in the base multiplier when computing the tax at 6.25%. Below is an example of what I charge my end user customers; all items are line itemed on the invoice.

ITEM	RATE
Jet Fuel	1.0000
Federal Excise Tax	.2190
IL Env Fee	.0080
IL Lust Fee	<u>.0030</u>
Price before Use Tax	1.2300

After reading Sections 130.2060, 130.445, B-2 and receiving a general information letter from the Revenue Department (enclosed). I still cannot determine which is the correct method to charge the tax on the fuel only or a combination of the fuel and taxes. If you could please respond in writing it would be most appreciated.

When deciding the question about whether a particular tax is included in the selling price for computing Retailers' Occupation Tax, one must look at the statute or tax act to see upon whom the taxing body (whether federal, state or local) has placed the legal incidence of the tax. Please see 86 Ill. Adm. Code 130.435 State and Local Taxes Other Than Retailers' Occupation Tax.

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. On the other hand, when the legal incidence of a tax is not imposed on the consumer but is imposed at a higher level in the distribution chain, e.g. upon the manufacturer, importer, or distributor, then the amounts of the retail selling price of the tangible personal property that represents these taxes is includable in the base and cannot be deducted in computing Retailers' Occupation Tax.

Provisions of Section 2a of the Motor Fuel Tax Law (35 ILCS 505/2a) impose an Underground Storage Tank Tax upon the privilege of being a receiver in this State of fuel. Section 310 of the Environmental Impact Fee Law, 415 ILCS 125/310, subjects receivers of fuel to the Environmental Impact Fee. The Underground Storage Tank Tax and the Environmental Impact Fee are includable in gross receipts subject to Retailers' Occupation Tax because those taxes are imposed at the manufacturer or importer level (see 35 ILCS 505/1.20 for the definition of receiver) and not upon the consumer.

As is the case with State taxes, federal taxes are not deductible from the selling price or gross receipts for purposes of calculating sales tax when the incidence of the tax falls upon the manufacturers, wholesales, or importers. Please refer to 86 Ill. Adm. Code 130.445. Accordingly, the federal excise taxes on gasoline and diesel fuel are not deductible because their legal incidence falls upon the manufacturers, wholesalers, or importers rather than upon the customers or end users. As such, they are costs of doing business that are not deductible from the base when calculating sales tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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Enc.